

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 103

Citations Affected: IC 5-14-1.5; IC 5-14-3; IC 8-1-2.2-31; IC 21-22-3-5; IC 21-25-3-8; IC 21-27-2-2; IC 25-1-14.

Synopsis: Serial meetings and public access issues. Conference committee report for ESB 103. Provides that, absent express statutory authorization, a member of the governing body of a public agency who is not physically present at a meeting but communicates with other members of the governing body during the meeting by an electronic means of communication may not participate in a final action taken at the meeting or be considered to be present at the meeting. Specifies the contents of the memoranda of a meeting that a member participates in by using an electronic means of communication. Allows the board of trustees (and a committee of the board) of a state educational institution, the Ivy Tech board of trustees (and a committee of the board), the board of trustees of Vincennes University (and a committee of the board), the governing body of a joint agency of a municipal utility program, and a board, committee, or commission administered by the Indiana professional licensing agency to conduct meetings by electronic means. Provides, with certain exceptions, that members of the governing body who participate in a series of gatherings either in person or by electronic means (excluding electronic mail) violate the open door law if: (1) one of the gatherings is attended by at least three members but less than a quorum of the members of the governing body and the other gatherings include at least two members of the governing body (for the city-county council of a consolidated city, one of the gatherings must be attended by at least five members and the other gatherings must include at least three members); (2) the total sum of different members attending all gatherings at least equals a quorum of the governing body; (3) all the gatherings concern the same subject matter and are held within a period of not more than seven consecutive days; and (4) the gatherings are held for the purpose of taking official action on public business. Excludes certain gatherings from the definition of "meeting" under the open door law. Provides that negotiations (in addition to "interviews" as provided in the current law) may be held in executive session between industrial or commercial prospects and the following: (1) The Indiana economic development corporation. (2) The Indiana finance authority. (3) An economic development commission. (4) A local economic development organization. (5) A governing body of a political subdivision. Exempts, at the discretion of the public agency, records from public access relating to negotiations between industrial, research, or commercial prospects and a local economic development organization or

a governing body of a political subdivision. Requires the terms of a final offer of public financial resources communicated by a governing body of a political subdivision to be available for inspection and copying after negotiations have terminated. Exempts from the open door law and the access to public records law an entity that: (1) receives public funds through an agreement with the state, county, or municipality to provide services, goods, or other benefits in exchange for fees; and (2) is not required by statute, rule, or regulation to submit to an audit by the state board of accounts. **(This conference committee report does the following: (1) Exempts from the open door law and the access to public records law an entity that receives public funds through an agreement with a county to provide services, goods, or other benefits in exchange for fees and is not required by statute, rule, or regulation to submit to an audit by the state board of accounts. (2) Specifies the contents of the memoranda of a meeting that a member participates in by using an electronic means of communication. (3) Makes technical amendments.)**

Effective: July 1, 2007.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 103 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 5-14-1.5-2 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. For the purposes of
- 4 this chapter:
- 5 (a) "Public agency", **except as provided in section 2.1 of this**
- 6 **chapter**, means the following:
- 7 (1) Any board, commission, department, agency, authority, or
- 8 other entity, by whatever name designated, exercising a portion of
- 9 the executive, administrative, or legislative power of the state.
- 10 (2) Any county, township, school corporation, city, town, political
- 11 subdivision, or other entity, by whatever name designated,
- 12 exercising in a limited geographical area the executive,
- 13 administrative, or legislative power of the state or a delegated
- 14 local governmental power.
- 15 (3) Any entity which is subject to either:
- 16 (A) budget review by either the department of local
- 17 government finance or the governing body of a county, city,
- 18 town, township, or school corporation; or
- 19 (B) audit by the state board of accounts **that is required by**
- 20 **statute, rule, or regulation.**
- 21 (4) Any building corporation of a political subdivision of the state
- 22 of Indiana that issues bonds for the purpose of constructing public

- 1 facilities.
- 2 (5) Any advisory commission, committee, or body created by
- 3 statute, ordinance, or executive order to advise the governing
- 4 body of a public agency, except medical staffs or the committees
- 5 of any such staff.
- 6 (6) The Indiana gaming commission established by IC 4-33,
- 7 including any department, division, or office of the commission.
- 8 (7) The Indiana horse racing commission established by IC 4-31,
- 9 including any department, division, or office of the commission.
- 10 (b) "Governing body" means two (2) or more individuals who are:
- 11 (1) a public agency that:
- 12 (A) is a board, a commission, an authority, a council, a
- 13 committee, a body, or other entity; and
- 14 (B) takes official action on public business;
- 15 (2) the board, commission, council, or other body of a public
- 16 agency which takes official action upon public business; or
- 17 (3) any committee appointed directly by the governing body or its
- 18 presiding officer to which authority to take official action upon
- 19 public business has been delegated. An agent or agents appointed
- 20 by the governing body to conduct collective bargaining on behalf
- 21 of the governing body does not constitute a governing body for
- 22 purposes of this chapter.
- 23 (c) "Meeting" means a gathering of a majority of the governing body
- 24 of a public agency for the purpose of taking official action upon public
- 25 business. It does not include:
- 26 (1) any social or chance gathering not intended to avoid this
- 27 chapter;
- 28 (2) any on-site inspection of any: ~~project or program;~~
- 29 **(A) project;**
- 30 **(B) program; or**
- 31 **(C) facilities of applicants for incentives or assistance from**
- 32 **the governing body;**
- 33 (3) traveling to and attending meetings of organizations devoted
- 34 to betterment of government; ~~or~~
- 35 (4) a caucus;
- 36 **(5) a gathering to discuss an industrial or a commercial**
- 37 **prospect that does not include a conclusion as to**
- 38 **recommendations, policy, decisions, or final action on the**
- 39 **terms of a request or an offer of public financial resources;**
- 40 **(6) an orientation of members of the governing body on their**
- 41 **role and responsibilities as public officials, but not for any**
- 42 **other official action; or**
- 43 **(7) a gathering for the sole purpose of administering an oath**
- 44 **of office to an individual.**
- 45 (d) "Official action" means to:
- 46 (1) receive information;
- 47 (2) deliberate;
- 48 (3) make recommendations;
- 49 (4) establish policy;
- 50 (5) make decisions; or
- 51 (6) take final action.

(e) "Public business" means any function upon which the public agency is empowered or authorized to take official action.

(f) "Executive session" means a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose.

(g) "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order.

(h) "Caucus" means a gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action.

(i) "Deliberate" means a discussion which may reasonably be expected to result in official action (defined under subsection (d)(3), (d)(4), (d)(5), or (d)(6)).

(j) "News media" means all newspapers qualified to receive legal advertisements under IC 5-3-1, all news services (as defined in IC 34-6-2-87), and all licensed commercial or public radio or television stations.

(k) "Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.

SECTION 2. IC 5-14-1.5-2.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 2.1. "Public agency", for purposes of this chapter, does not mean a provider of goods, services, or other benefits that meets the following requirements:**

(1) The provider receives public funds through an agreement with the state, a county, or a municipality that meets the following requirements:

(A) The agreement provides for the payment of fees to the entity in exchange for services, goods, or other benefits.

(B) The amount of fees received by the entity under the agreement is not based upon or does not involve a consideration of the tax revenues or receipts of the state, county, or municipality.

(C) The amount of the fees are negotiated by the entity and the state, county, or municipality.

(D) The state, county, or municipality is billed for fees by the entity for the services, goods, or other benefits actually provided by the entity.

(2) The provider is not required by statute, rule, or regulation to be audited by the state board of accounts.

SECTION 3. IC 5-14-1.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 3. (a) Except as provided in section 6.1 of this chapter, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them.**

(b) A secret ballot vote may not be taken at a meeting.

(c) A meeting conducted in compliance with IC 5-1.5-2-2.5 does not violate this section.

(d) A member of the governing body of a public agency who is

not physically present at a meeting of the governing body but who communicates with members of the governing body during the meeting by telephone, computer, videoconferencing, or any other electronic means of communication:

(1) may not participate in final action taken at the meeting unless the member's participation is expressly authorized by statute; and

(2) may not be considered to be present at the meeting unless considering the member to be present at the meeting is expressly authorized by statute.

(e) The memoranda of a meeting prepared under section 4 of this chapter that a member participates in by using a means of communication described in subsection (d) must state the name of:

(1) each member who was physically present at the place where the meeting was conducted;

(2) each member who participated in the meeting by using a means of communication described in this section; and

(3) each member who was absent.

SECTION 4. IC 5-14-1.5-3.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3.1. (a) Except as provided in subsection (b), the governing body of a public agency violates this chapter if members of the governing body participate in a series of at least two (2) gatherings of members of the governing body and the series of gatherings meets all of the following criteria:

(1) One (1) of the gatherings is attended by at least three (3) members but less than a quorum of the members of the governing body and the other gatherings include at least two (2) members of the governing body.

(2) The sum of the number of different members of the governing body attending any of the gatherings at least equals a quorum of the governing body.

(3) All the gatherings concern the same subject matter and are held within a period of not more than seven (7) consecutive days.

(4) The gatherings are held to take official action on public business.

For purposes of this subsection, a member of a governing body attends a gathering if the member is present at the gathering in person or if the member participates in the gathering by telephone or other electronic means, excluding electronic mail.

(b) This subsection applies only to the city-county council of a consolidated city or county having a consolidated city. The city-county council violates this chapter if its members participate in a series of at least two (2) gatherings of members of the city-county council and the series of gatherings meets all of the following criteria:

(1) One (1) of the gatherings is attended by at least five (5) members of the city-county council and the other gatherings include at least three (3) members of the city-county council.

(2) The sum of the number of different members of the

city-county council attending any of the gatherings at least equals a quorum of the city-county council.

(3) All the gatherings concern the same subject matter and are held within a period of not more than seven (7) consecutive days.

(4) The gatherings are held to take official action on public business.

For purposes of this subsection, a member of the city-county council attends a gathering if the member is present at the gathering in person or if the member participates in the gathering by telephone or other electronic means, excluding electronic mail.

(c) A gathering under subsection (a) or (b) does not include:

(1) a social or chance gathering not intended by any member of the governing body to avoid the requirements of this chapter;

(2) an onsite inspection of any:

(A) project;

(B) program; or

(C) facilities of applicants for incentives or assistance from the governing body;

(3) traveling to and attending meetings of organizations devoted to the betterment of government;

(4) a caucus;

(5) a gathering to discuss an industrial or a commercial prospect that does not include a conclusion as to recommendations, policy, decisions, or final action on the terms of a request or an offer of public financial resources;

(6) an orientation of members of the governing body on their role and responsibilities as public officials, but not for any other official action;

(7) a gathering for the sole purpose of administering an oath of office to an individual; or

(8) a gathering between less than a quorum of the members of the governing body intended solely for members to receive information and deliberate on whether a member or members may be inclined to support a member's proposal or a particular piece of legislation and at which no other official action will occur.

(d) A violation described in subsection (a) or (b) is subject to section 7 of this chapter.

SECTION 5. IC 5-14-1.5-6.1, AS AMENDED BY P.L.101-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6.1. (a) As used in this section, "public official" means a person:

(1) who is a member of a governing body of a public agency; or

(2) whose tenure and compensation are fixed by law and who executes an oath.

(b) Executive sessions may be held only in the following instances:

(1) Where authorized by federal or state statute.

(2) For discussion of strategy with respect to any of the following:

(A) Collective bargaining.

- 1 (B) Initiation of litigation or litigation that is either pending or
- 2 has been threatened specifically in writing.
- 3 (C) The implementation of security systems.
- 4 (D) The purchase or lease of real property by the governing
- 5 body up to the time a contract or option to purchase or lease is
- 6 executed by the parties.
- 7 However, all such strategy discussions must be necessary for
- 8 competitive or bargaining reasons and may not include
- 9 competitive or bargaining adversaries.
- 10 (3) For discussion of the assessment, design, and implementation
- 11 of school safety and security measures, plans, and systems.
- 12 (4) Interviews **and negotiations** with industrial or commercial
- 13 prospects or agents of industrial or commercial prospects by the
- 14 Indiana economic development corporation, the office of tourism
- 15 development, the Indiana finance authority, ~~or an~~ economic
- 16 development ~~commissions~~, **commission, a local economic**
- 17 **development organization (as defined in IC 5-28-11-2(3)), or**
- 18 **a governing body of a political subdivision.**
- 19 (5) To receive information about and interview prospective
- 20 employees.
- 21 (6) With respect to any individual over whom the governing body
- 22 has jurisdiction:
- 23 (A) to receive information concerning the individual's alleged
- 24 misconduct; and
- 25 (B) to discuss, before a determination, the individual's status
- 26 as an employee, a student, or an independent contractor who
- 27 is:
- 28 (i) a physician; or
- 29 (ii) a school bus driver.
- 30 (7) For discussion of records classified as confidential by state or
- 31 federal statute.
- 32 (8) To discuss before a placement decision an individual student's
- 33 abilities, past performance, behavior, and needs.
- 34 (9) To discuss a job performance evaluation of individual
- 35 employees. This subdivision does not apply to a discussion of the
- 36 salary, compensation, or benefits of employees during a budget
- 37 process.
- 38 (10) When considering the appointment of a public official, to do
- 39 the following:
- 40 (A) Develop a list of prospective appointees.
- 41 (B) Consider applications.
- 42 (C) Make one (1) initial exclusion of prospective appointees
- 43 from further consideration.
- 44 Notwithstanding IC 5-14-3-4(b)(12), a governing body may
- 45 release and shall make available for inspection and copying in
- 46 accordance with IC 5-14-3-3 identifying information concerning
- 47 prospective appointees not initially excluded from further
- 48 consideration. An initial exclusion of prospective appointees from
- 49 further consideration may not reduce the number of prospective
- 50 appointees to fewer than three (3) unless there are fewer than
- 51 three (3) prospective appointees. Interviews of prospective

1 appointees must be conducted at a meeting that is open to the
2 public.

3 (11) To train school board members with an outside consultant
4 about the performance of the role of the members as public
5 officials.

6 (12) To prepare or score examinations used in issuing licenses,
7 certificates, permits, or registrations under IC 15-5-1.1 or IC 25.

8 (13) To discuss information and intelligence intended to prevent,
9 mitigate, or respond to the threat of terrorism.

10 (c) A final action must be taken at a meeting open to the public.

11 (d) Public notice of executive sessions must state the subject matter
12 by specific reference to the enumerated instance or instances for which
13 executive sessions may be held under subsection (b). The requirements
14 stated in section 4 of this chapter for memoranda and minutes being
15 made available to the public is modified as to executive sessions in that
16 the memoranda and minutes must identify the subject matter
17 considered by specific reference to the enumerated instance or
18 instances for which public notice was given. The governing body shall
19 certify by a statement in the memoranda and minutes of the governing
20 body that no subject matter was discussed in the executive session
21 other than the subject matter specified in the public notice.

22 (e) A governing body may not conduct an executive session during
23 a meeting, except as otherwise permitted by applicable statute. A
24 meeting may not be recessed and reconvened with the intent of
25 circumventing this subsection.

26 SECTION 6. IC 5-14-1.5-7 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) An action may be
28 filed by any person in any court of competent jurisdiction to:

29 (1) obtain a declaratory judgment;

30 (2) enjoin continuing, threatened, or future violations of this
31 chapter; or

32 (3) declare void any policy, decision, or final action:

33 (A) taken at an executive session in violation of section 3(a) of
34 this chapter;

35 (B) taken at any meeting of which notice is not given in
36 accordance with section 5 of this chapter;

37 (C) that is based in whole or in part upon official action taken
38 at any:

39 (i) executive session in violation of section 3(a) of this
40 chapter; ~~or at any~~

41 (ii) meeting of which notice is not given in accordance with
42 section 5 of this chapter; or

43 (iii) **series of gatherings in violation of section 3.1 of this**
44 **chapter; or**

45 (D) taken at a meeting held in a location in violation of section
46 8 of this chapter.

47 The plaintiff need not allege or prove special damage different from
48 that suffered by the public at large.

49 (b) Regardless of whether a formal complaint or an informal inquiry
50 is pending before the public access counselor, any action to declare any
51 policy, decision, or final action of a governing body void, or to enter an

injunction which would invalidate any policy, decision, or final action of a governing body, based on violation of this chapter occurring before the action is commenced, shall be commenced:

(1) prior to the delivery of any warrants, notes, bonds, or obligations if the relief sought would have the effect, if granted, of invalidating the notes, bonds, or obligations; or

(2) with respect to any other subject matter, within thirty (30) days of either:

(A) the date of the act or failure to act complained of; or

(B) the date that the plaintiff knew or should have known that the act or failure to act complained of had occurred;

whichever is later. If the challenged policy, decision, or final action is recorded in the memoranda or minutes of a governing body, a plaintiff is considered to have known that the act or failure to act complained of had occurred not later than the date that the memoranda or minutes are first available for public inspection.

(c) If a court finds that a governing body of a public agency has violated this chapter, it may not find that the violation was cured by the governing body by only having taken final action at a meeting that complies with this chapter.

(d) In determining whether to declare any policy, decision, or final action void, a court shall consider the following factors among other relevant factors:

(1) The extent to which the violation:

(A) affected the substance of the policy, decision, or final action;

(B) denied or impaired access to any meetings that the public had a right to observe and record; and

(C) prevented or impaired public knowledge or understanding of the public's business.

(2) Whether voiding of the policy, decision, or final action is a necessary prerequisite to a substantial reconsideration of the subject matter.

(3) Whether the public interest will be served by voiding the policy, decision, or final action by determining which of the following factors outweighs the other:

(A) The remedial benefits gained by effectuating the public policy of the state declared in section 1 of this chapter.

(B) The prejudice likely to accrue to the public if the policy, decision, or final action is voided, including the extent to which persons have relied upon the validity of the challenged action and the effect declaring the challenged action void would have on them.

(4) Whether the defendant acted in compliance with an informal inquiry response or advisory opinion issued by the public access counselor concerning the violation.

(e) If a court declares a policy, decision, or final action of a governing body of a public agency void, the court may enjoin the governing body from subsequently acting upon the subject matter of the voided act until it has been given substantial reconsideration at a meeting or meetings that comply with this chapter.

(f) In any action filed under this section, a court shall award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to the prevailing party if:

(1) the plaintiff prevails; or

(2) the defendant prevails and the court finds that the action is frivolous and vexatious.

The plaintiff is not eligible for the awarding of attorney's fees, court costs, and other reasonable expenses if the plaintiff filed the action without first seeking and receiving an informal inquiry response or advisory opinion from the public access counselor, unless the plaintiff can show the filing of the action was necessary to prevent a violation of this chapter.

(g) A court shall expedite the hearing of an action filed under this section.

SECTION 7. IC 5-14-3-2, AS AMENDED BY P.L.1-2006, SECTION 101, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) The definitions set forth in this section apply throughout this chapter.

(b) "Copy" includes transcribing by handwriting, photocopying, xerography, duplicating machine, duplicating electronically stored data onto a disk, tape, drum, or any other medium of electronic data storage, and reproducing by any other means.

(c) "Direct cost" means one hundred five percent (105%) of the sum of the cost of:

(1) the initial development of a program, if any;

(2) the labor required to retrieve electronically stored data; and

(3) any medium used for electronic output;

for providing a duplicate of electronically stored data onto a disk, tape, drum, or other medium of electronic data retrieval under section 8(g) of this chapter, or for reprogramming a computer system under section 6(c) of this chapter.

(d) "Electronic map" means copyrighted data provided by a public agency from an electronic geographic information system.

(e) "Enhanced access" means the inspection of a public record by a person other than a governmental entity and that:

(1) is by means of an electronic device other than an electronic device provided by a public agency in the office of the public agency; or

(2) requires the compilation or creation of a list or report that does not result in the permanent electronic storage of the information.

(f) "Facsimile machine" means a machine that electronically transmits exact images through connection with a telephone network.

(g) "Inspect" includes the right to do the following:

(1) Manually transcribe and make notes, abstracts, or memoranda.

(2) In the case of tape recordings or other aural public records, to listen and manually transcribe or duplicate, or make notes, abstracts, or other memoranda from them.

(3) In the case of public records available:

(A) by enhanced access under section 3.5 of this chapter; or

(B) to a governmental entity under section 3(c)(2) of this chapter;

to examine and copy the public records by use of an electronic device.

(4) In the case of electronically stored data, to manually transcribe and make notes, abstracts, or memoranda or to duplicate the data onto a disk, tape, drum, or any other medium of electronic storage.

(h) "Investigatory record" means information compiled in the course of the investigation of a crime.

(i) "Patient" has the meaning set out in IC 16-18-2-272(d).

(j) "Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.

(k) "Provider" has the meaning set out in ~~IC 16-18-2-295(a)~~ **IC 16-18-2-295(b)** and includes employees of the state department of health or local boards of health who create patient records at the request of another provider or who are social workers and create records concerning the family background of children who may need assistance.

(l) "Public agency", **except as provided in section 2.1 of this chapter**, means the following:

(1) Any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state.

(2) Any:

(A) county, township, school corporation, city, or town, or any board, commission, department, division, bureau, committee, office, instrumentality, or authority of any county, township, school corporation, city, or town;

(B) political subdivision (as defined by IC 36-1-2-13); or

(C) other entity, or any office thereof, by whatever name designated, exercising in a limited geographical area the executive, administrative, judicial, or legislative power of the state or a delegated local governmental power.

(3) Any entity or office that is subject to:

(A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or

(B) an audit by the state board of accounts **that is required by statute, rule, or regulation.**

(4) Any building corporation of a political subdivision that issues bonds for the purpose of constructing public facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) Any law enforcement agency, which means an agency or a department of any level of government that engages in the investigation, apprehension, arrest, or prosecution of alleged criminal offenders, such as the state police department, the police or sheriff's department of a political subdivision, prosecuting

attorneys, members of the excise police division of the alcohol and tobacco commission, conservation officers of the department of natural resources, gaming agents of the Indiana gaming commission, and the security division of the state lottery commission.

(7) Any license branch staffed by employees of the bureau of motor vehicles commission under IC 9-16.

(8) The state lottery commission established by IC 4-30-3-1, including any department, division, or office of the commission.

(9) The Indiana gaming commission established under IC 4-33, including any department, division, or office of the commission.

(10) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

(m) "Public record" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

(n) "Standard-sized documents" includes all documents that can be mechanically reproduced (without mechanical reduction) on paper sized eight and one-half (8 1/2) inches by eleven (11) inches or eight and one-half (8 1/2) inches by fourteen (14) inches.

(o) "Trade secret" has the meaning set forth in IC 24-2-3-2.

(p) "Work product of an attorney" means information compiled by an attorney in reasonable anticipation of litigation. The term includes the attorney's:

(1) notes and statements taken during interviews of prospective witnesses; and

(2) legal research or records, correspondence, reports, or memoranda to the extent that each contains the attorney's opinions, theories, or conclusions.

This definition does not restrict the application of any exception under section 4 of this chapter.

SECTION 8. IC 5-14-3-2.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 2.1. "Public agency", for purposes of this chapter, does not mean a provider of goods, services, or other benefits that meets the following requirements:**

(1) The provider receives public funds through an agreement with the state, a county, or a municipality that meets the following requirements:

(A) The agreement provides for the payment of fees to the entity in exchange for services, goods, or other benefits.

(B) The amount of fees received by the entity under the agreement is not based upon or does not involve a consideration of the tax revenues or receipts of the state, county, or municipality.

(C) The amount of the fees are negotiated by the entity and the state, county, or municipality.

(D) The state, county, or municipality is billed for fees by the entity for the services, goods, or other benefits actually provided by the entity.

(2) The provider is not required by statute, rule, or regulation to be audited by the state board of accounts.

SECTION 9. IC 5-14-3-4, AS AMENDED BY P.L.101-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

- (1) Those declared confidential by state statute.
- (2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.
- (3) Those required to be kept confidential by federal law.
- (4) Records containing trade secrets.
- (5) Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.
- (6) Information concerning research, including actual research documents, conducted under the auspices of an institution of higher education, including information:
 - (A) concerning any negotiations made with respect to the research; and
 - (B) received from another party involved in the research.
- (7) Grade transcripts and license examination scores obtained as part of a licensure process.
- (8) Those declared confidential by or under rules adopted by the supreme court of Indiana.
- (9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39.
- (10) Application information declared confidential by the board of the Indiana economic development corporation under IC 5-28-16.
- (11) A photograph, a video recording, or an audio recording of an autopsy, except as provided in IC 36-2-14-10.
- (12) A Social Security number contained in the records of a public agency.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

- (1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.
- (2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:
 - (A) a public agency;
 - (B) the state; or
 - (C) an individual.
- (3) Test questions, scoring keys, and other examination data used

in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of the person's scores.

(5) The following:

(A) Records relating to negotiations between the Indiana economic development corporation, the Indiana finance authority, ~~or an economic development commissions;~~ **commission, a local economic development organization (as defined in IC 5-28-11-2(3)), or a governing body of a political subdivision** with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the Indiana economic development corporation, the Indiana finance authority, ~~or an economic development commissions~~ **commission, or a governing body of a political subdivision** to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the Indiana economic development corporation shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a record keeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:

(A) the donor requires nondisclosure of the donor's identity as a condition of making the gift; or

(B) after the gift is made, the donor or a member of the donor's family requests nondisclosure.

(16) Library or archival records:

(A) which can be used to identify any library patron; or

(B) deposited with or acquired by a library upon a condition that the records be disclosed only:

(i) to qualified researchers;

(ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or

(iii) after the death of persons specified at the time of the acquisition or deposit.

However, nothing in this subdivision shall limit or affect contracts entered into by the Indiana state library pursuant to IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing medical advisory board regarding the ability of a driver to operate a motor vehicle safely. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations.

(18) School safety and security measures, plans, and systems, including emergency preparedness plans developed under 511 IAC 6.1-2-2.5.

(19) A record or a part of a record, the public disclosure of which would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack. A record described under this subdivision includes:

(A) a record assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2;

- 1 (B) vulnerability assessments;
- 2 (C) risk planning documents;
- 3 (D) needs assessments;
- 4 (E) threat assessments;
- 5 (F) intelligence assessments;
- 6 (G) domestic preparedness strategies;
- 7 (H) the location of community drinking water wells and
- 8 surface water intakes;
- 9 (I) the emergency contact information of emergency
- 10 responders and volunteers;
- 11 (J) infrastructure records that disclose the configuration of
- 12 critical systems such as communication, electrical, ventilation,
- 13 water, and wastewater systems; and
- 14 (K) detailed drawings or specifications of structural elements,
- 15 floor plans, and operating, utility, or security systems, whether
- 16 in paper or electronic form, of any building or facility located
- 17 on an airport (as defined in IC 8-21-1-1) that is owned,
- 18 occupied, leased, or maintained by a public agency. A record
- 19 described in this clause may not be released for public
- 20 inspection by any public agency without the prior approval of
- 21 the public agency that owns, occupies, leases, or maintains the
- 22 airport. The public agency that owns, occupies, leases, or
- 23 maintains the airport:
- 24 (i) is responsible for determining whether the public
- 25 disclosure of a record or a part of a record has a reasonable
- 26 likelihood of threatening public safety by exposing a
- 27 vulnerability to terrorist attack; and
- 28 (ii) must identify a record described under item (i) and
- 29 clearly mark the record as "confidential and not subject to
- 30 public disclosure under IC 5-14-3-4(b)(19)(J) without
- 31 approval of (insert name of submitting public agency)".
- 32 This subdivision does not apply to a record or portion of a record
- 33 pertaining to a location or structure owned or protected by a
- 34 public agency in the event that an act of terrorism under
- 35 IC 35-47-12-1 or an act of agricultural terrorism under
- 36 IC 35-47-12-2 has occurred at that location or structure, unless
- 37 release of the record or portion of the record would have a
- 38 reasonable likelihood of threatening public safety by exposing a
- 39 vulnerability of other locations or structures to terrorist attack.
- 40 (20) The following personal information concerning a customer
- 41 of a municipally owned utility (as defined in IC 8-1-2-1):
- 42 (A) Telephone number.
- 43 (B) Address.
- 44 (C) Social Security number.
- 45 (21) The following personal information about a complainant
- 46 contained in records of a law enforcement agency:
- 47 (A) Telephone number.
- 48 (B) The complainant's address. However, if the complainant's
- 49 address is the location of the suspected crime, infraction,
- 50 accident, or complaint reported, the address shall be made
- 51 available for public inspection and copying.

(c) Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.

(d) Notwithstanding any other law, a public record that is classified as confidential, other than a record concerning an adoption, shall be made available for inspection and copying seventy-five (75) years after the creation of that record.

(e) Notwithstanding subsection (d) and section 7 of this chapter:

(1) public records subject to IC 5-15 may be destroyed only in accordance with record retention schedules under IC 5-15; or

(2) public records not subject to IC 5-15 may be destroyed in the ordinary course of business.

SECTION 10. IC 8-1-2.2-31 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 31. (a) This section applies to a meeting of the board of commissioners of a joint agency at which at least a quorum of the board is physically present at the place where the meeting is conducted.**

(b) A member of the board of commissioners of a joint agency may participate in a meeting of the board of commissioners by using a means of communication that permits:

(1) all other members participating in the meeting; and

(2) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting.

(c) A member of the board of commissioners of a joint agency who participates in a meeting by using a means of communication described in subsection (b) is considered to be present at the meeting.

(d) The memoranda of a meeting of the board of commissioners of a joint agency prepared under IC 5-14-1.5-4 must state the name of:

(1) each member who was physically present at the place where the meeting was conducted;

(2) each member who participated in the meeting by using a means of communication described in subsection (b); and

(3) each member who was absent.

SECTION 11. IC 21-22-3-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 5. (a) This section applies to a meeting of the state board or a committee of the state board at which at least a quorum of the board or the committee is physically present at the place where the meeting is conducted.**

(b) A member of the state board or a committee of the state board may participate in a meeting of the state board or a committee of the state board by using a means of communication that permits:

(1) all other members participating in the meeting; and

(2) all members of the public physically present at the place where the meeting is conducted;

1 to simultaneously communicate with each other during the
2 meeting.

3 (c) A member who participates in a meeting by using a means
4 of communication described in subsection (b) is considered to be
5 present at the meeting.

6 (d) The memoranda of the meeting prepared under
7 IC 5-14-1.5-4 must state the name of:

- 8 (1) each member who was physically present at the place
9 where the meeting was conducted;
- 10 (2) each member who participated in the meeting by using a
11 means of communication described in subsection (b); and
- 12 (3) each member who was absent.

13 SECTION 12. IC 21-25-3-8 IS ADDED TO THE INDIANA CODE
14 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
15 1, 2007]: Sec. 8. (a) This section applies to a meeting of the board
16 of trustees or a committee of the board of trustees at which at least
17 a quorum of the board or the committee is physically present at the
18 place where the meeting is conducted.

19 (b) A member of the board or a committee of the board may
20 participate in a meeting of the board or the committee by using a
21 means of communication that permits:

- 22 (1) all other members participating in the meeting; and
- 23 (2) all members of the public physically present at the place
24 where the meeting is conducted;

25 to simultaneously communicate with each other during the
26 meeting.

27 (c) A member who participates in a meeting by using a means
28 of communication described in subsection (b) is considered to be
29 present at the meeting.

30 (d) The memoranda of the meeting prepared under
31 IC 5-14-1.5-4 must state the name of:

- 32 (1) each member who was physically present at the place
33 where the meeting was conducted;
- 34 (2) each member who participated in the meeting by using a
35 means of communication described in subsection (b); and
- 36 (3) each member who was absent.

37 SECTION 13. IC 21-27-2-2 IS ADDED TO THE INDIANA CODE
38 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
39 1, 2007]: Sec. 2. (a) This section applies to a meeting of the board
40 of trustees or a committee of the board of trustees of any state
41 educational institution (as defined in IC 21-7-13-32).

42 (b) A member of the board of trustees may participate in a
43 meeting of the board:

- 44 (1) at which at least a quorum is physically present at the
45 place where the meeting is conducted; and
- 46 (2) by using a means of communication that permits:
 - 47 (A) all other members participating in the meeting; and
 - 48 (B) all members of the public physically present at the
49 place where the meeting is conducted;

50 to simultaneously communicate with each other during the
51 meeting.

(c) A member of a committee of the board of trustees may participate in a committee meeting by using a means of communication that permits:

- (1) all other members participating in the meeting; and
 - (2) all members of the public physically present at the place where the meeting is conducted;
- to simultaneously communicate with each other during the meeting.

(d) A member who participates in a meeting under subsection (b) or (c) is considered to be present at the meeting.

(e) The memoranda of the meeting prepared under IC 5-14-1.5-4 must state the name of:

- (1) each member who was physically present at the place where the meeting was conducted;
- (2) each member who participated in the meeting by using a means of communication described in subsection (b) or (c); and
- (3) each member who was absent.

SECTION 14. IC 25-1-14 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 14. Meetings

Sec. 1. This section applies to a meeting of a board, committee, or commission listed in IC 25-1-5-3 or IC 25-1-6-3.

Sec. 2. A member of a board, committee, or commission may participate in a meeting of the board, committee, or commission:

- (1) at which at least a quorum is physically present at the place where the meeting is conducted; and
- (2) by using a means of communication that permits:
 - (A) all other members participating in the meeting; and
 - (B) all members of the public physically present at the place where the meeting is conducted;
 to simultaneously communicate with each other during the meeting.

Sec. 3. A member who participates in a meeting under section 2 of this chapter:

- (1) is considered to be present at the meeting;
- (2) shall be counted for purposes of establishing a quorum; and
- (3) may vote at the meeting.

Sec. 4. The memoranda of the meeting prepared under IC 5-14-1.5-4 must state the name of:

- (1) each member who was physically present at the place where the meeting was conducted;
- (2) each member who participated in the meeting by using a means of communication described in section 2 of this chapter; and
- (3) each member who was absent.

(Reference is to ESB 103 as reprinted March 27, 2007.)

Conference Committee Report
on
Engrossed Senate Bill 103

Signed by:

Senator Gard
Chairperson

Representative Stilwell

Senator Lanane

Representative Koch

Senate Conferees

House Conferees